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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/562,382

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Ricardo Kolb Filho

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EXAMINER

ING, MATTHEW W

ART UNIT

PAPER NUMBER

3637

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/562,382	Applicant(s) FILHO ET AL.	
	Examiner MATTHEW W. ING	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>23 December 2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on 12/23/05 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Objections

2. Claims 2-3 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Regarding claims 2-3, whereas the terms "transitional intermediary position", "upper operative position", and "lower operative position" are viewed as denoting intended use, the sole limitations of these claims impose further limitations not upon the structure of the shelf, but rather upon the intended use thereof. As such, claims 2-3 fail to further limit the subject matter of claim 1.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Regarding claim 1, the inclusion of the term "the cabinet" in line 6 renders it unclear whether applicant intends to claim only a shelf, or a shelf in combination with a cabinet.

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Clarification is requested. For the purposes of examination, the examiner is considering claims 1-14 to claim a shelf in combination with a cabinet

6. Regarding claims 1, 5, 11, & 13-14, the terms "it" and "its" lack antecedent basis in the claim.
7. Regarding claims 4, 9, 13, & 14, the term "which" lacks antecedent basis in the claim.
8. Regarding claim 4, the term "the seating position" in line 4 lacks antecedent basis in the claim.
9. Regarding claim 12, the term "the two rail portions" in line 2 lacks antecedent basis in the claim.
10. Regarding claim 12, the term "the same side" in line 3 lacks antecedent basis in the claim.
11. Regarding claim 12, the term "the front end" in line 6 lacks antecedent basis in the claim.
12. Regarding claim 13, the term "the latter" in line 6 lacks antecedent basis in the claim.
13. Claims 2-3, 6-8, & 10 are considered indefinite since they depend from an indefinite base claim.

Claim Rejections - 35 USC § 102

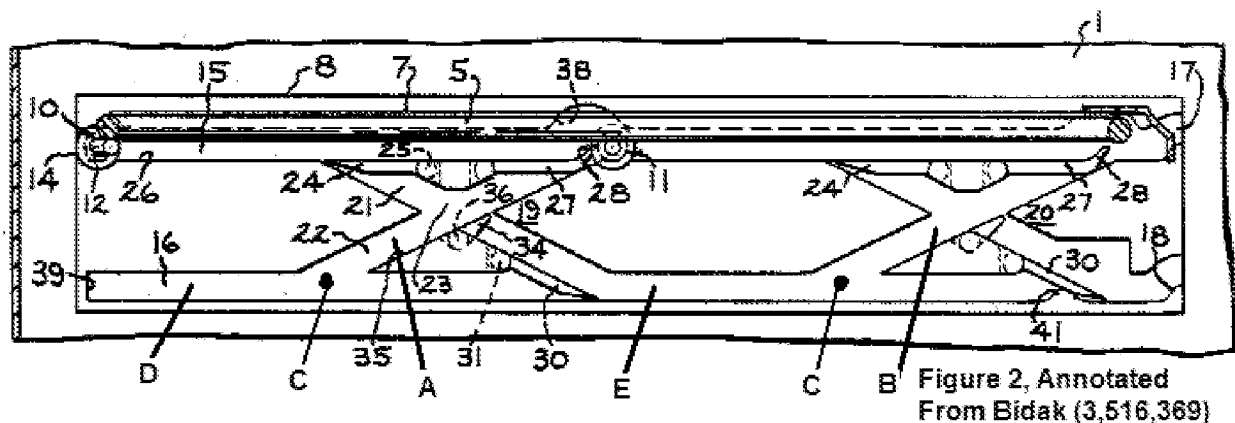
14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

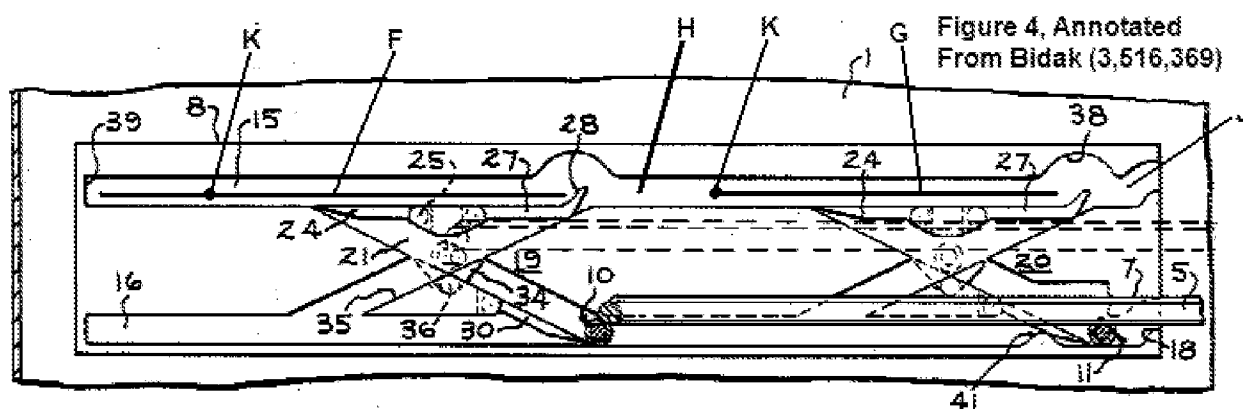
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15. Claims 1-9 & 12-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Bidak (3,516,369).

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16. Regarding claim 1, Bidak teaches a retractable shelf (4) for the cabinet of a refrigeration appliance, said shelf having each lateral edge (5, 6) slidingly mounted, by two longitudinally spaced apart seating regions (10, 11), on respective rail portions (A & D, and B & E in Fig. 2 Annotated) affixed to opposite internal lateral walls (1) of the cabinet (2), in order to be selectively displaced between at least one lower operative position (i.e., when 10 & 11 are located at points C) and one transitional intermediary position (Fig. 3), in which it is upwardly forwardly displaced, and also between said transitional operative position and an upper operative position (i.e., when 10 & 11 are located at points K), in which it is backwardly displaced, situated above and vertically spaced from the lower operative position.



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17. Regarding claim 2, Bidak teaches a retractable shelf the transitional intermediary position (Fig. 3) is substantially in the same level of the upper operative position (i.e., when 10 & 11 are located at points K).

18. Regarding claim 3, Bidak teaches a retractable shelf wherein lower and upper operative positions are parallel and vertically aligned to each other. See Figs. 2 & 4 Annotated.

19. Regarding claim 4, Bidak teaches a retractable shelf wherein each rail portion (A & D and B & E) comprises: a lower rail extension (A, B) forwardly upwardly inclined and which presents a closed lower end (D, E) defining the seating position for a respective seating region (10, 11) when the shelf (4) is in the lower operative position, and an open upper end (i.e., upper end of A & B, when 27 is open); and an upper rail extension (F, G) having a rear end defining the seating position for a respective seating region (10, 11) when the shelf (4) is in the upper operative position, and a front end (33b) which is opened (i.e., when 27 is at least partially opened, as in Fig. 3) to the interior of the upper end of the lower rail extension (A, B). The examiner submits that whereas Item E is "closed" at least when Items 30 & 19 are in the positions shown in Fig. 2, Item E can therefore be termed a "closed lower end"; and that whereas A & B are open when Item 27 is open, each of Items A & B can therefore be said to possess an "open upper end". As such, Bidak is viewed as reading upon the limitations of claim 4.

20. Regarding claim 5, Bidak teaches a retractable shelf wherein the upper rail extension (F, G) is horizontal, with its rear end being vertically aligned in relation to the lower end (D, E) of the lower rail extension (A, B).

21. Regarding claim 6, Bidak teaches a retractable shelf wherein the junction of the lower rail extension (A, B) and the upper rail extension (F, G), in the front end of the latter, defines the

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position of the respective seating region (10, 11) when the shelf (4) reaches the transitional intermediary position (Fig. 3).

22. Regarding claim 7, Bidak teaches a retractable shelf wherein the lower rail extension (A, B) and the upper rail extension (F, G) of each rail portion take the form of "U" shaped channels (Figs. 1 & 2), with the bottom wall being seated and affixed (Fig. 1) against a respective internal lateral wall (1) of the cabinet (2).

23. Regarding claim 8, Bidak teaches a retractable shelf wherein each seating region (10, 11) comprises a pin that is externally incorporated to a respective lateral edge of the shelf (4), in order to project outwardly to be slidably fitted in the interior of the "U" shaped channels defined by the lower rail extension (A, B) and the upper rail extension (F, G).

24. Regarding claim 9, Bidak teaches a retractable shelf wherein the seating regions (10, 11) are disposed in a plane inferior to that in which the supporting upper face of the shelf (4) is found. See Fig. 2.

25. Regarding claim 12, Bidak teaches a retractable shelf wherein the two rail portions positioned on the same side of the shelf (4) are formed in a single piece (i.e., as part of 8 or 9), with the rear end of the upper rail extension (G) of one of the rail portions being incorporated to the front end of the upper rail extension (F) of the other of said rail extensions, by means of an intermediary rail extension (H). See Fig. 2.

26. Regarding claim 13, Bidak teaches a retractable shelf wherein each pair of rail portions, formed in a single piece, incorporates a front rail extension (J), which is horizontally leveled and associated with the adjacent upper rail extension (F), as it were a continuation of the latter, and

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having a front end which is open for allowing the seating regions (10, 11) of the shelf (4) to be mounted to the rail portions.

Claim Rejections - 35 USC § 103

27. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

28. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

29. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bidak (3,516,369) as applied to the claim(s) above, further in view of Dallman (2003/0102788). Bidak teach(es) the structure substantially as claimed, including a shelf (4) having seating regions (10, 11) connected to a shelf via connecting means (i.e., portion of Items 12 directly connected to the shelf). The only difference between Bidak and the invention as claimed is that Bidak fail(s) to teach seating regions carried by respective pending lateral flaps of the shelf. Dallman, however, teaches connecting means comprising pending lateral flaps (34) of a shelf, said flaps each carrying support regions (35). Whereas the connecting means of Bidak & Dallman are both equivalent alternative structures for accomplishing similar purposes, it therefore would have

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been obvious to one of ordinary skill in the art to substitute the connecting means of Dallman for that of Bidak, since the results of such a substitution would have been predictable, thereby providing the structure substantially as claimed.

30. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bidak (3,516,369) as applied to the claim(s) above, further in view of Frederick (2,565,845). Bidak teach(es) the structure substantially as claimed, including upper rail extensions (F, G) having rear ends. The only difference between Bidak and the invention as claimed is that Bidak fail(s) to teach each upper rail extension having its rear end provided with a lower recess, defining a concave cradle. Frederick, however, teaches a rail extension having its rear end provided with a lower recess, defining a concave cradle (E4) for supporting a seating region (D). It would have been obvious to one of ordinary skill in the art to include a lower recess, as taught by Frederick, in the rear of each of the upper rail extensions of Bidak in order to allow retention of the shelf in an upper position (as suggested by col. 2, line 3 of Frederick), thereby providing the structure substantially as claimed.

31. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bidak (3,516,369) as applied to the claim(s) above. Bidak teach(es) the structure substantially as claimed, including a front rail extension (J) provided with a stop means (18) that blocks the passage of seating regions (10, 11) along said front rail extension. The only difference between Bidak and the invention as claimed is that Bidak fail(s) to teach stop means selectively displaced between an operative position and an operative positive, in which it respectively blocks and liberates the passage of the seating regions along said front rail extension. Bidak, however, also teaches second stop means (34) capable of selective displacement to block and liberate the

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passage of a seating region (10, 11). Whereas the stop means & second stop means of Bidak are both equivalent alternative structures for accomplishing similar purposes of blocking passage of a seating region, it therefore would have been obvious to one of ordinary skill in the art to substitute a second stop means, as taught by Bidak, for the stop means thereof, since the results of such a substitution would have been predictable; thereby providing the structure substantially as claimed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW W. ING whose telephone number is (571)272-6536. The examiner can normally be reached on Monday through Friday, 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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14 August 2008

/José V. Chen/

Primary Examiner, Art Unit 3637